

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: **MAY 28 2013**

OFFICE: TEXAS SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you

A handwritten signature in black ink, appearing to be "Ron Rosenberg", written over a horizontal line.

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a software consulting and development company. It seeks to employ the beneficiary permanently in the United States as a computer programmer pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, a labor certification Form ETA 9089 (Application for Permanent Employment Certification) accompanied the petition. Upon reviewing the petition, the director determined that the petitioner failed to demonstrate that the beneficiary satisfied the minimum level of education required by the labor certification.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

On March 20, 2013, the AAO issued a request for evidence (RFE) requesting evidence of the petitioner's intent concerning the actual minimum educational requirements of the proffered position. The AAO explained that it appeared that the beneficiary's credentials were not equivalent to a U.S. baccalaureate degree and that the evidence in the record of proceeding as currently constituted did not support a determination that the petitioner intended the actual minimum requirements of the proffered position to include alternatives to a bachelor's degree.

In addition, the AAO asked the petitioner to submit copies of the petitioner's federal tax returns, audited financial statements, and/or annual reports for 2011 and 2012 as well as any Internal Revenue Service (IRS) Forms W-2 (Wage and Tax Statement) issued to the beneficiary for 2011 and 2012 to show that the petitioner has the continuing ability to pay the proffered wage.

The AAO gave the petitioner 45 days to respond and submit additional evidence, as noted above. The AAO specifically alerted the petitioner that failure to respond to the RFE would result in dismissal as the AAO could not substantively adjudicate the appeal without the information requested. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14).

Forty five days have passed, and no response and/or additional evidence have been submitted. For this reason, the AAO is dismissing the appeal without further discussion. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.